

Message

From: Chalfant, Mark [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C1D644333F94EA2AFF756BE6469E5AD-CHALFANT, MARK]
Sent: 7/24/2017 1:50:39 PM
To: Madigan, Andrea [Madigan.Andrea@epa.gov]
Subject: FW: Anaconda/CFAC Oversight Bill Issue

Per our discussion

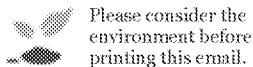
From: Otis, Andrew D. [mailto:aotis@curtis.com]
Sent: Monday, July 24, 2017 7:39 AM
To: Chalfant, Mark <Chalfant.Mark@epa.gov>
Cc: Cirian, Mike <Cirian.Mike@epa.gov>; McCaffrey, Shawn <McCaffrey.Shawn@epa.gov>
Subject: RE: Anaconda/CFAC Oversight Bill Issue

Many thanks for your prompt and helpful, reply Mark. I am having an excellent summer and hope that you are too.

Andrew D. Otis
Partner

Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, New York 10178-0061

Direct Dial: +1 212 696 6907
Fax: +1 917 368 7307
aotis@curtis.com



From: Chalfant, Mark [mailto:Chalfant.Mark@epa.gov]
Sent: Monday, July 24, 2017 9:37 AM
To: Otis, Andrew D.
Cc: Cirian, Mike; McCaffrey, Shawn
Subject: RE: Anaconda/CFAC Oversight Bill Issue

Mr. Otis:

I hope your summer is treating you well. Thank you for your detailed email and explanation below. We have reviewed the accounting for the July 6, 2017 oversight bill for the period, 11/20/2015-12/31/2016, and have confirmed that the bill contains \$13,492.56 in costs that do not fall under the definition of "Future Response Costs" in the 2015 Administrative Order on Consent (AOC). You are correct that Columbia Falls Aluminum Company, LLC is not responsible for paying costs that pre-date the November 30, 2015 effective date of the 2015 AOC. The \$13,492.56 in costs were inadvertently included in the oversight bill due to miscommunication between my office and the finance office. I apologize for any confusion that this error may have caused. CFAC can expect to receive a revised oversight bill in two to three weeks, which will start over the clock for payment of the oversight bill. Please let me know if you wish to discuss this matter further.

Mark

Mark A.R. Chalfant

Acting Deputy Assistant Regional Administrator | Office of Enforcement, Compliance and Environmental Justice | U.S. EPA Region 8
National Administrative Litigation Co-Coordinator | Office of Civil Enforcement | U.S. EPA Headquarters
Work: 303.312.6177 | Fax: 303-312-7202 | chalfant.mark@epa.gov

This email is for the intended recipient only and may contain material that is privileged and/or confidential. If you believe you have received this email in error, please notify the sender. Thank you.

From: Otis, Andrew D. [<mailto:aotis@curtis.com>]

Sent: Tuesday, July 18, 2017 1:24 PM

To: Chalfant, Mark <Chalfant.Mark@epa.gov>

Cc: Hogue, Matthew <Hogue.Matthew@epa.gov>

Subject: RE: Anaconda/CFAC Oversight Bill Issue

Mark,

Thanks for following up.

I had intended to resolve this issue with you informally so this email is not intended to contest payment of Future Response Costs pursuant to paragraph 85 of the Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study ("AOC") but is to provide you with the additional information requested in your email below. Furthermore, Columbia Falls Aluminum Company, LLC ("CFAC") reserves its rights under the AOC, including but not limited to the right to contest payment of Future Response Costs as provided therein.

CCA believes that the invoice sent by Karren Johnson to CFAC and dated July 6, 2017 (EPA Bill # 2781726S0036), a copy of which is attached to this email for your reference, contains \$13,492.56 in costs that do not fall under the definition of "Future Response Costs" in the AOC and therefore are not recoverable by EPA under the AOC.

Under Section XIX, Payment of Response Costs, Paragraph 83, Payments of Future Response Costs, CFAC is liable to pay to EPA all Future Response Costs not inconsistent with the NCP.

Future Response Costs are defined in paragraph 10 of the AOC as including "all costs, including but not limited to, direct and indirect costs, that the United States incurs in: (i) reviewing or developing plans, report and other deliverables submitted pursuant to the Settlement Agreement; (2) overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to , payroll costs, travel costs, laboratory costs;....."

All of the costs listed in the definition cannot be incurred until the after the Effective Date of the AOC. The Effective Date of the AOC is, according to paragraph 113, the date "that the Settlement Agreement is signed by the Regional Administrator or his/her delegate."

Although when a cost is "incurred" is not defined in the AOC or EPA Guidance, EPA complies with standards issued by the Federal Accounting Standards Advisory Board (FASAB). The 2016 FASAB Handbook defines Obligations Incurred as, among other things, amounts of services received in one period that are payable in that or a future period. Thus costs are "incurred" by EPA for purposes of the definition of "Future Response Costs" in the AOC when they receive a voucher from a contractor for such costs.

The EPA signed the AOC on November 30, 2015 which is the Effective Date. Therefore, costs incurred, i.e. for which EPA received vouchers, prior to November 30, 2015 are costs incurred prior to the Effective Date of the AOC, cannot be Future Response Costs pursuant to the AOC, and therefore should not be recoverable by EPA. Furthermore, if such

direct costs are not recoverable by EPA under the AOC, indirect costs associated with such direct costs should also not be recoverable under the AOC.

EPA received the following vouchers for the following services rendered from the following contractors in the following amounts with the following associated indirect costs prior to November 30, 2015:

CDM Federal Programs Corp, Voucher No: B07200, date: 11/20/15, Site Direct Amount: \$7,027.35, indirect amount: \$3,969.05, Total: \$10,996.4

Toeroek Associates, Voucher No: 3, date: 11/13/17, Site Direct Amount: \$1,551.9, indirect amount: \$876.51, Total: \$2,428.41

Weston Solutions, Voucher No. TO04-29, date: 11/20/15, Site Direct Amount: \$41.07, indirect amount: \$26.68, Total \$67.75

Total: \$13,492.56.

Thus, CFAC believes that \$13,492.56 of costs in EPA's invoice dated July 6 are not recoverable by EPA and would request that EPA issue a new invoice without those costs included.

Let me know if you have any questions or would like to discuss.

Best regards,

Andrew

Andrew D. Otis
Partner

Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, New York 10178-0061

Direct Dial: +1 212 696 6907
Fax: +1 917 368 7307
aotis@curtis.com



Please consider the
environment before
printing this email.

From: Chalfant, Mark [<mailto:Chalfant.Mark@epa.gov>]
Sent: Tuesday, July 18, 2017 2:25 PM
To: Otis, Andrew D.
Cc: Hogue, Matthew
Subject: Anaconda/CFAC Oversight Bill Issue

Mr. Otis:

Thank you for your voicemail message this morning. I am sorry I missed your call. I appreciate your bringing the oversight billing issue to my attention. I would be happy to discuss this matter with you. But I would like to take you up

on your offer to email me additional information about the item which appears to predate the effective date of the November, 2015 AOC for the Remedial Investigation and Feasibility Study so we can have informed discussion. I look forward to your response. I will be in the office through Thursday of this week.

Mark

Mark A.R. Chalfant

Acting Deputy Assistant Regional Administrator | Office of Enforcement, Compliance and Environmental Justice | U.S. EPA Region 8
National Administrative Litigation Co-Coordinator | Office of Civil Enforcement | U.S. EPA Headquarters
Work: 303.312.6177 | Fax: 303-312-7202 | chalfant.mark@epa.gov

This email is for the intended recipient only and may contain material that is privileged and/or confidential. If you believe you have received this email in error, please notify the sender. Thank you.

This e-mail, including any attachments, may contain information that is protected by law as privileged and confidential, and is transmitted for the sole use of the intended recipient. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying or retention of this e-mail or the information contained herein is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by telephone or reply e-mail, and permanently delete this e-mail from your computer system. Your privacy is very important to our firm. Therefore, if this message contains unsolicited commercial content, you may forward this e-mail to unsubscribe@curtis.com or click here (www.curtis.com/unsubscribe.htm) if you do not want to receive further messages of this nature. Thank you.

Curtis, Mallet-Prevost, Colt & Mosle LLP (101 Park Avenue, New York, NY 10178)
